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6 UNITED STATES DISTRICT COURT  
7 DISTRICT OF NEVADA

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9 DANIEL KAPETAN,  
10 v. Plaintiff,  
11 JAMES G. COX, et al. Defendants.  
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Case No. 3:13-cv-00171-MMD-VPC  
ORDER ADOPTING AND ACCEPTING  
REPORT AND RECOMMENDATION OF  
MAGISTRATE JUDGE  
VALERIE P. COOKE

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14 Before the Court is the Report and Recommendation of United States Magistrate  
15 Judge Valerie P. Cooke (dkt. no. 43) ("R&R") relating to Defendants' Motion to Dismiss  
16 (dkt. no. 22) and motions to strike (dkt. nos. 34, 41). No objection to the R&R has been  
17 filed. Plaintiff has filed a motion for extension of time to file an amended complaint.  
18 (Dkt. no. 44.)

19 This Court "may accept, reject, or modify, in whole or in part, the findings or  
20 recommendations made by the magistrate judge." 28 U.S.C. § 636(b)(1). Where a party  
21 timely objects to a magistrate judge's report and recommendation, then the court is  
22 required to "make a *de novo* determination of those portions of the [report and  
23 recommendation] to which objection is made." 28 U.S.C. § 636(b)(1). Where a party fails  
24 to object, however, the court is not required to conduct "any review at all . . . of any issue  
25 that is not the subject of an objection." *Thomas v. Arn*, 474 U.S. 140, 149 (1985).  
26 Indeed, the Ninth Circuit has recognized that a district court is not required to review a  
27 magistrate judge's report and recommendation where no objections have been filed. See  
28 *United States v. Reyna-Tapia*, 328 F.3d 1114 (9th Cir. 2003) (disregarding the standard

1 of review employed by the district court when reviewing a report and recommendation to  
2 which no objections were made); see also *Schmidt v. Johnstone*, 263 F. Supp. 2d 1219,  
3 1226 (D. Ariz. 2003) (reading the Ninth Circuit's decision in *Reyna-Tapia* as adopting the  
4 view that district courts are not required to review "any issue that is not the subject of an  
5 objection."). Thus, if there is no objection to a magistrate judge's recommendation, then  
6 the court may accept the recommendation without review. See, e.g., *Johnstone*, 263 F.  
7 Supp. 2d at 1226 (accepting, without review, a magistrate judge's recommendation to  
8 which no objection was filed).

9 Nevertheless, this Court finds it appropriate to engage in a *de novo* review to  
10 determine whether to adopt Magistrate Judge Cooke's R&R. Upon reviewing the R&R  
11 and underlying briefs, this Court finds good cause to adopt the Magistrate Judge's  
12 Recommendation in full.

13 It is therefore ordered, adjudged and decreed that the Report and  
14 Recommendation of Magistrate Judge Valerie P. Cooke (dkt. no. 43) is accepted and  
15 adopted in its entirety.

16 It is ordered that Defendants' Motion to Dismiss (dkt. no. 22) is granted in part and  
17 denied in part as follows: (1) Count II is dismissed with prejudice and without leave to  
18 amend; (2) Count III may proceed; (3) The Eighth Amendment claim against defendants  
19 Neubauer, Dutton, Cox, Foster, Reed, Palmer, Walsh, Williams, Smith, Burson, Moyle,  
20 Hill, and Stark set forth in Count I may proceed; (4) the Fourteenth Amendment equal  
21 protection claim and the ADA claim set forth in Count I will be dismissed with prejudice  
22 and without leave to amend; (5) the Fourteenth Amendment due process claim against  
23 defendant Ward set forth in Count I will be dismissed without prejudice and with leave to  
24 amend.

25 It is further ordered that Defendant's motion to strike Plaintiff's exhibit list (dkt. no.  
26 34) is granted. Plaintiff's exhibit list (dkt. no. 30) will be stricken.

27 It is further ordered that Defendant's motion to strike Plaintiff's sur-reply to motion  
28 to dismiss (dkt. no. 41) is granted. Plaintiff's sur-reply (dkt. no. 39) will be stricken.

1 It is further order that Plaintiff's motion for extension of time (dkt. no. 44) is denied  
2 as moot since the time period for plaintiff to file the amended complaint has not been  
3 triggered. Plaintiff has thirty (30) days from the date of entry of this order to file an  
4 amended complaint in compliance with the R&R should he wish to do so. The amended  
5 complaint must be a complete document in and of itself, and will supersede the original  
6 complaint in its entirety. Any allegations, parties, or requests for relief from prior papers  
7 that are not carried forward in the amended complaint will no longer be before the Court.

8 Plaintiff should clearly title the amended complaint as such by placing the words  
9 "FIRST AMENDED" immediately above "Civil Rights Complaint Pursuant to 42 U.S.C. §  
10 1983" on page 1 in the caption, and plaintiff shall place the case number, 3:13-cv-00171-  
11 MMD-VPC, above the words "FIRST AMENDED" in the space for "Case No." Plaintiff  
12 may find the Civil Rights Complaint form and instructions on the District of Nevada  
13 website <http://www.nvd.uscourts.gov/Files/42.1983%20Civil%20Rights%20Complaint.pdf>.

14 DATED THIS 28<sup>th</sup> day of October 2014.

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17 MIRANDA M. DU  
18 UNITED STATES DISTRICT JUDGE  
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